

Jeffrey D. Hill v. New Castle County, et al.

C. A. No. 07-228 (GMS)

Plaintiff's Answering Brief In Opposition Of Defendants' Motion For Summary Judgment

APPENDIX L

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE
JEFFREY D. HILL,

Plaintiff,

v.

NEW CASTLE COUNTY POLICE
DEPARTMENT, a division of New
Castle County; and NEW CASTLE
COUNTY, a municipal corporation,
Defendants.

Deposition of MARK HITCH taken pursuant to notice at the New Castle County Law Department, 87 Reads Way, New Castle, Delaware, beginning at 1:22 p.m. on Monday, June 30, 2008, before Christina M. Vitale, Certified Court Reporter and Notary Public.

APPEARANCES:

TIMOTHY J. WILSON, ESQUIRE
MARTIN & WILSON

1508 Pennsylvania Avenue
Wilmington, Delaware 19806
For the Plaintiff

MEGAN SANFRANCESCO, FIRST ASSISTANT COUNTY
ATTORNEY

New Castle County Law Department
87 Reads Way
New Castle, Delaware 19720
For the Defendants

ALSO PRESENT: Jeffrey D. Hill and Quinton L. Watson

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MARK HITCH, the deponent herein,
having first been duly sworn on oath, was
examined and testified as follows:

BY MR. WILSON:

Q. Good afternoon, Captain Hitch, I'm Tim
Wilson.

A. Yes, sir.

Q. Did you hear the instructions I gave
Sergeant Hyden?

A. I did.

Q. Would you like me to go over them
again --

A. No, sir.

Q. -- or do you recall? That will save us a
little bit of time. What did you do to prepare
for today's deposition?

A. Met with Ms. Sanfrancesco.

Q. Did you review any documents?

A. No, sir.

Q. Did you review Corporal Hill's deposition
transcript?

A. I don't have his transcript.

Q. At any time?

A. No.



1 Q. Did you talk to anybody other than Ms.
2 Sanfrancesco to prepare for this deposition?

3 A. No, sir.

4 Q. The next questions I will ask you don't
5 have to do with preparing for the deposition, but
6 have you talked to anybody about this lawsuit?

7 A. Yes, sir.

8 Q. Who have you talked to?

9 A. Whew, my wife, I've talked to a couple
10 friends of mine, just general -- honest, just
11 general frustration, I can't believe I'm being
12 sued over this.

13 Q. Have you talked to Captain Watson about
14 the lawsuit?

15 A. Yes, sir.

16 Q. What did you guys discuss?

17 A. Generally the same thing. Just kind of
18 in awe of being sued over a transfer.

19 Q. Have you talked to Sergeant Hyden about
20 the lawsuit?

21 A. Probably only consistent with what she
22 said in passing, Did you get your notice for
23 deposition?

24 Q. Did you discuss the allegations in the



1 complaint with Sergeant Hyden?

2 A. No, sir.

3 MR. WILSON: And, again, I just want
4 to get some background information and the
5 previous stipulation of whatever it was we talked
6 about, personal information, is fine and won't be
7 shared with anybody.

8 MS. SANFRANCESCO: Well, I mean, we
9 are going to keep their address as the county's
10 address and I'll be the person to contact in case
11 they're not here anymore and you can't contact
12 them.

13 BY MR. WILSON:

14 Q. Sir, where were you born?

15 A. Salisbury, Maryland.

16 Q. What is your birth date?

17 A. April 29, 1965.

18 Q. Have you ever been arrested?

19 A. No, sir.

20 Q. Did you serve in the military?

21 A. No, sir.

22 Q. Have you ever been involved in any type
23 of civil legal proceeding? Have you ever been
24 named as a party in a civil legal proceeding?



1 A. No, sir.

2 Q. Witness?

3 A. Yes, sir, I'm sure. I can't remember
4 specifically.

5 Q. So, you don't specifically recall what
6 the case was?

7 A. May have been and I'm not sure if it was
8 a deposition for a lawsuit or it was a labor --
9 OSHA board type thing is what is flashing in my
10 mind, investigation on that, but I don't think
11 so, sir.

12 Q. Did you go to college?

13 A. Yes, sir.

14 Q. Where did you go?

15 A. University of Delaware.

16 Q. Did you graduate?

17 A. I did, sir.

18 Q. What year?

19 A. 1989.

20 Q. And what is your degree in?

21 A. BS in criminal justice.

22 Q. Did you graduate with honors?

23 A. No, sir.

24 Q. Have you done any graduate work?



1 A. No, sir.

2 Q. And you are presently employed by New
3 Castle County, correct?

4 A. Yes.

5 Q. What is your job title?

6 A. I'm a police captain.

7 Q. How long have you been a police captain?

8 A. A little over eight years.

9 Q. And what department do you work in?

10 A. Department?

11 Q. There is no department?

12 A. You don't mean the New Castle County
13 police, you mean my specific section?

14 Q. Yes.

15 A. I am the commander of the criminal
16 investigation section.

17 Q. How long have you been in that position?

18 A. Since early September of last year.

19 Q. And where had you worked before that?

20 A. Prior to that I was patrol commander.

21 Q. And was that when you had the mounted
22 unit underneath you?

23 A. You need more room to write this.

24 Q. Okay.



7
1 A. I was patrol commander and I don't
2 remember specific dates, but at the point I had
3 the mounted unit under me. I was the criminal
4 investigation section commander at this time as
5 well. I've been in -- since I've been a captain
6 to put it in retrospect I've been human resources
7 section commander, I've been the criminal
8 investigation section commander, I've been patrol
9 section commander twice and this is my second
10 tour as the criminal investigation section
11 commander. So, when I had the mounted unit it
12 was my first tour in the criminal investigation
13 section.

14 Q. When you had the mounted unit that was
15 during the relevant time period of Corporal
16 Hill's complaint, correct?

17 A. Actually, no. The time period of the
18 actual complaints, the incidents that were
19 occurring, Captain Setting was the commander of
20 the unit. I came in shortly after that.

21 Q. Were you made aware immediately that
22 there were these issues going on between Corporal
23 Hill and Sergeant Hyden?

24 A. I was made aware by Captain Setting that



1 there was a complaint made by Corporal Hill
2 regarding Sergeant Hyden. That was actually
3 prior to me taking the command.

4 Q. And this topic that we were talking about
5 earlier, the clean slate meeting, was that your
6 idea?

7 A. Having the meeting?

8 Q. Yes.

9 A. Yes.

10 Q. Did that occur shortly after you took
11 over?

12 A. No. That occurred probably four months
13 after I took over, but after I had concluded
14 investigating and looking into the complaint that
15 Corporal Hill made.

16 Q. Was Corporal Hill a good employee of the
17 mounted unit?

18 MS. SANFRANCISCO: I'm just going to
19 object to the phrase "good employee."

20 BY MR. WILSON:

21 Q. Did Corporal Hill receive good
22 evaluations during your time while he was on the
23 mounted unit?

24 A. I don't remember prior to this incident



1 reviewing his evaluations so I'm afraid to tell
2 you yes or no as far as evaluations go.

3 Q. Did you get complaints about Corporal
4 Hill?

5 A. No, sir.

6 Q. Did Sergeant Hyden complain about
7 Corporal Hill?

8 A. Prior to the complaint? Well, see, the
9 problem is, sir, I knew about this incident when
10 I walked into the unit. So, it wasn't a
11 situation where I had an opportunity to discuss
12 any employee performances good or bad with
13 Sergeant Hyden because I walked into this
14 complaint. So, when I walked into the unit I
15 already had this complaint to deal with. So, I
16 mean, it's kind of hard to --

17 Q. Okay, I understand. Now, Corporal Hill
18 filed the complaint before Sergeant Hyden brought
19 up any type of issues with Corporal Hill,
20 correct?

21 A. Again, sir, because -- I'm not trying to
22 be difficult with this question, but she filed --
23 he filed the original or he made the original
24 verbal complaint to Captain Setting so I didn't



1 discuss Corporal Hill prior to that with Sergeant
2 Hyden. So, she didn't have an opportunity to say
3 good or bad about Jeff at that point because I
4 walked into this complaint that he had already
5 made through Captain Setting.

6 Q. Based upon your observations would you
7 say that Sergeant Hyden and Corporal Hoff are
8 friends?

9 A. I don't know, sir. I don't know.

10 Q. If you don't know, that's fine.

11 A. I just don't know.

12 Q. Have you ever heard from any police
13 officers that Corporal Hoff receives more
14 favorable treatment from Sergeant Hyden than did
15 the other officers in the mounted unit?

16 A. Corporal Hill.

17 Q. Anybody else?

18 A. I think Officer Guiton when I prodded him
19 with the question gave some indication that he
20 felt she was treated differently.

21 Q. Do you remember what he said?

22 A. I don't, sir.

23 Q. Anybody else?

24 A. No, sir.



1 Q. The contest that is referred to in the
2 complaint did that occur while you were in
3 charge?

4 A. I'm not sure exactly when that occurred,
5 sir. I want to say no, I want to say it happened
6 prior to me being in charge, but I'm not sure
7 when that occurred other than hearing her say
8 April to whatever, March.

9 Q. Are these type of contests held in any
10 other divisions?

11 A. I mean, I don't know if formal contest is
12 how I would describe them, but I have heard of
13 units trying to motivate their officers by
14 putting some type of for lack of a better word
15 challenge out there to the officers to produce.

16 Q. What is your understanding of the policy
17 of the acting sergeant when the regular sergeant
18 is away? Let me rephrase that. Is it your
19 understanding that the most senior officer should
20 be made acting sergeant?

21 A. It's my understanding that the policy is
22 the most senior officer now. Prior to that, as
23 Sergeant Hyden indicated, it was senior most
24 qualified.



1 Q. The whole thing with the radar units you
2 weren't in command at that time?

3 A. No, sir.

4 Q. Are you aware of Corporal Hill's
5 allegation regarding Sergeant Hyden's comment
6 about him being under Captain Setting's desk?

7 A. I'm aware of the complaint, yes, sir.

8 Q. Were you made aware of that comment when
9 you were in charge of the mounted unit?

10 A. No, sir.

11 Q. When did you find out about that?

12 A. When I read Corporal Hill's grievance.

13 Q. Were you not in charge of the mounted
14 unit when you read his grievance?

15 A. No, sir, I believe the grievance was
16 filed after Captain Watson had taken command of
17 the mounted unit.

18 Q. Why would you read the grievance if you
19 were not in command?

20 A. Because I was listed as part of that
21 grievance, if I recall, sir.

22 Q. Do you approve of statements like the one
23 that was alleged?

24 A. Do I approve of them?



1 Q. Yes.

2 A. Obviously as manager of the department my
3 answer is no. As a manager on the department do
4 I believe they occur in certain situations and
5 there are complaints made about them, yes, I'm
6 aware of that too. I think it's probably -- you
7 know, I met with Jeff several times prior to that
8 grievance and that statement was never brought to
9 my attention at any point until I read it in the
10 grievance.

11 Q. Were you in charge of investigating this
12 grievance?

13 A. The grievance?

14 Q. Yes.

15 A. I wasn't in charge of the grievance. The
16 original complaint if you are talking about that?
17 I investigated that, yes.

18 Q. What did you do to investigate that?

19 A. I interviewed Jeff, Corporal Hill. I
20 interviewed the other members of the mounted
21 unit. I interviewed Sergeant Hyden.

22 Q. Did you collect written statements from
23 anybody?

24 A. No, not at that point.



1 Q. You said not at that point, did you at
2 some point?

3 A. Not related to that investigation, that
4 original investigation, no, sir.

5 Q. Did you collect written statements from
6 people in regard to any issues surrounding the
7 problems between Sergeant Hyden and Corporal
8 Hill?

9 A. Again, not in that original complaint,
10 which is what as far as what I'm thinking of as
11 the incident between Sergeant Hyden and Corporal
12 Hill was that original complaint that he made to
13 Captain Setting that I ended up having to pick up
14 and look into. I didn't collect any written
15 documents today.

16 Q. Did you ever collect any written
17 documents from anybody?

18 A. Yes.

19 Q. Who did you get them from?

20 A. Sergeant Hyden, Officer Hennessy, Officer
21 Hoff, Officer Brown.

22 Q. Did you request that these individuals
23 give you written statements?

24 A. Yes.



1 Q. Did you tell them what you wanted to be
2 in the statements?

3 A. No, sir.

4 Q. What were your instructions to these
5 people?

6 A. They had indicated to me verbally
7 concerns over Corporal Hill's demeanor and
8 performance around the stables and essentially my
9 instructions were put it in writing.

10 Q. And did this occur after the clean slate
11 meeting?

12 A. Yes, sir, it did.

13 Q. How long after the clean slate meeting?

14 A. I would estimate approximately a month.

15 Q. What prompted you to request these
16 statements? Was it just their comments to you?

17 A. Sergeant Hyden came to me and indicated
18 that some of the officers had expressed concerns
19 to her that after the meeting the end of January,
20 which you are referring to as the clean slate
21 meeting, Corporal Hill had initially done better
22 around the stables and on the street, but that
23 that had faded off and she expressed that these
24 other officers -- my recollection of that is she



1 essentially told me these other officers want to
2 talk to you. So, I set up times for them to come
3 in and talk to me.

4 Q. Would you say that when Sergeant Hyden
5 came to you with these complaints that Corporal
6 Hill was no longer on the clean slate?

7 MS. SANFRANCESCO: I'm just going to
8 object to the term. That was Sergeant Hyden's
9 term.

10 BY MR. WILSON:

11 Q. Was the term "clean slate" used at the
12 meeting?

13 A. Yes.

14 Q. What did you interpret clean slate to
15 mean?

16 A. That from that point on -- sir, this was
17 a three and a half hour meeting, which, to be
18 honest with you, I thought would last about an
19 hour, but they were both given ample opportunity
20 in my opinion to express their feelings and after
21 that my idea of clean slate was everybody was
22 going to go back out. He was going to do what
23 was expected of him. She was going to treat him
24 just like any other member of the unit and



1 starting fresh.

2 Q. Is it your understanding that what had
3 happened in the past was to be left in the past
4 and not be dredged up any further?

5 A. Yes, sir.

6 Q. During this meeting were the parties
7 encouraged to speak freely?

8 A. I feel that they were, yes, sir, and I
9 feel that they both did speak freely.

10 Q. Was there any point in the meeting where
11 Sergeant Hyden pulled rank in essence saying, You
12 can't talk to me this way, I'm a sergeant?

13 A. Not that I recall, sir, not that I
14 recall.

15 Q. Was Sergeant Hyden angry during the
16 meeting?

17 A. I don't remember anyone being angry
18 during the meeting.

19 Q. After the meeting were you satisfied that
20 Sergeant Hyden's attitude towards Corporal Hill
21 would be that she was going to forget about
22 everything that had happened in the past?

23 MS. SANFRANCISCO: Objection to the
24 extent it calls for speculation.



1 A. It was my understanding -- yes, sir, it
2 was, but, again, I'm not sure that -- I'm not
3 convinced that she acted otherwise prior to that
4 meeting I guess is my point, is my concern, with
5 the question.

6 Q. Who made the decision to transfer
7 Corporal Hill out of the mounted unit?

8 A. All decisions for transfer, sir, are at
9 the authority of the chief of police.

10 Q. Did anybody make any recommendations to
11 the chief of police?

12 A. Yes, sir.

13 Q. Who made the recommendations?

14 A. Myself and Captain Watson.

15 Q. And why did you make the recommendation?

16 A. Because after speaking briefly with the
17 officers and reading their memos my personal
18 opinion was that Corporal Hill's general demeanor
19 around the stables, his alleged or reported lack
20 of motivation and production was -- had been
21 noticed and noted by the other members of the
22 unit and in my opinion at that point he hadn't
23 conformed or held up his end of the bargain from
24 the clean slate meeting that he was going to



1 improve his attitude, improve his work product,
2 and because of that it was affecting the morale
3 and general cohesiveness of that entire unit.

4 It's a small unit, they're together
5 all the time and the sense that I was getting is
6 some of those officers were just -- they were
7 uncomfortable being around Jeff at that point.

8 Q. Did you ever consider that Sergeant
9 Hyden's actions may have been what prompted his
10 reverting back to -- because you stated at first
11 he had a good attitude and everything was going
12 fine and all of a sudden he kind of reverted back
13 to the way he was before. Did you ever consider
14 that Sergeant Hyden might have had something to
15 do with that?

16 A. No, sir.

17 Q. Why not?

18 A. Because I was never given any indication
19 that Sergeant Hyden's actions were in-
20 appropriate, that she had done anything in-
21 appropriate after that meeting.

22 Q. Did you speak with Corporal Hill about
23 that?

24 A. I did not.



1 Q. Why not?

2 A. As far as that question?

3 Q. Yes.

4 A. Because honestly Corporal Hill had felt
5 comfortable enough to come forward and make the
6 complaint about Sergeant Hyden's actions in his
7 opinion before. If there were those actions or
8 some actions that were inappropriate, I felt
9 fairly certain he would come forward with them
10 again. Additionally, in speaking with the other
11 three officers I spoke to there was no indication
12 that Sergeant Hyden's actions were in-
13 appropriate.

14 Q. Were you ever concerned that transferring
15 Corporal Hill out of the unit after he had made
16 complaints about Sergeant Hyden would have legal
17 ramifications?

18 A. No, sir.

19 Q. Corporal Williams, were you the one that
20 made the decision to replace Corporal Hill with
21 Corporal Williams?

22 A. No, sir, I wasn't.

23 Q. Who made that decision?

24 A. I have no idea. That decision was made



1 after I was transferred from command of that
2 unit.

3 Q. Had Sergeant Hyden ever mentioned
4 Corporal Williams to you as a potential
5 replacement?

6 A. No, sir. In fact, the only people I even
7 remember having replacement conversations -- I
8 don't know if it was replacement as much as it
9 was people she would like to see in the unit was
10 Corporal Berg and Corporal Davis and I think she
11 mentioned Corporal Sommers. I don't remember her
12 mentioning Ed, I remember Phil and Joe because
13 they were classmates of mine; but, other than
14 that I do remember those two specifically.

15 Q. Did Sergeant Hyden expressly request that
16 Corporal Hill be transferred out of the unit?

17 A. No, sir.

18 Q. Did she make any request that any type of
19 discipline be --

20 A. No, sir. She brought the concerns to my
21 attention. She never said to me I want Jeff gone
22 or I recommend that Jeff be transferred. She
23 never said the words.

24 Q. Did she ever make an inference that she



1 wanted Jeff gone?

2 A. Not that I could go back and point to. I
3 think probably a lot of that was my opinion was
4 me jumping to the conclusion that she wanted
5 that, but I can't point to anything she said or
6 did that would say I wanted Jeff gone or that she
7 wanted Jeff to be transferred. I probably
8 assumed a lot based on if I had been in that
9 position, if I had been in her position.

10 Q. How is it decided where Corporal Hill
11 would be transferred to?

12 A. Do you mean what section of the
13 department, sir?

14 Q. Yes.

15 A. Generally when officers are transferred
16 from an inside unit, although not always,
17 generally are transferred back to the street,
18 back to the patrol division. As far as the
19 specific squad that Jeff was transferred to that
20 would have been the decision of Captain Watson I
21 think at that time.

22 Q. Why do you say back to the patrol
23 division?

24 A. Because we all started in the patrol



1 division, sir.

2 Q. Everybody?

3 A. When we graduate from police academy,
4 yes, sir. When we are transferred into an inside
5 unit for the most part that's where all of us
6 come from.

7 Q. Do police officers generally try to move
8 to an inside unit?

9 MS. SANFRANCISCO: I object to the
10 extent it calls for speculation.

11 A. My answer would be that a number do and a
12 number don't. Some officers are completely happy
13 working the street. Some look to go to other
14 areas of the department.

15 Q. Do you know of any officer that has spent
16 his entire career in patrol?

17 A. Off the top of my head I know of one.

18 Q. Who is that?

19 A. Corporal Mike Hopkins. And I'm sure
20 there is a number of others, but that's -- again,
21 because Mike was in my academy class is why his
22 name pops to my mind.

23 Q. When you were in patrol where did you
24 transfer to?



1 A. Detectives.

2 Q. Is that something you wanted?

3 A. Yes, sir, it was.

4 Q. Did you enjoy working in patrol?

5 A. There were aspects, yes, sir, there were
6 aspects of patrol I enjoyed.

7 Q. Were there aspects of patrol you didn't
8 enjoy?

9 A. Just like any other job, just like when
10 you are with the detectives there are certain
11 things you did that you didn't enjoy doing, sure,
12 just like in any other position we held, but we
13 all became cops knowing we were very possibly
14 going to be in patrol for your entire career and
15 you accept that when you come into the police
16 department.

17 Q. With regard to a complaint made by a
18 civilian employee to a civilian supervisor about
19 a police officer should that be reported to that
20 police officer's supervisor?

21 A. Please ask me that again.

22 Q. Okay. We spoke earlier about the issue
23 with --

24 A. And I'm not familiar with that.



1 Q. -- the smiley face. That's why I'm
2 trying to get the policy on it. If a civilian
3 employee has a complaint about a police officer
4 and that civilian employee complains to his
5 supervisor should the police officer's supervisor
6 be notified of that complaint?

7 A. I don't know what the civilian's
8 supervisor policies are on what they're supposed
9 to and not supposed to report so I couldn't
10 answer that.

11 Q. This under the desk comment you said that
12 you didn't know about it while you were in charge
13 of the mounted unit?

14 A. No, sir.

15 Q. Was Captain Watson supposed to
16 investigate that allegation?

17 A. I don't know who was supposed to
18 investigate it.

19 MR. WILSON: If we can take a couple
20 minutes and I'll talk to Jeff, I'm almost done.

21 (Brief recess.)

22 BY MR. WILSON:

23 Q. Going back to the memos that you got from
24 the other officers why did you just get memos



1 from Brown, Hoff, Hennessy and Hyden?

2 A. Because those were the specific officers
3 that it was indicated to me that they wanted to
4 talk to me.

5 Q. Don't you think that a complete
6 investigation you would speak to everybody and
7 get memos from everybody about it?

8 MS. SANFRANCESCO: Objection.

9 A. In retrospect, sir, I probably should
10 have gotten a memo from Officer Guiton as well.

11 Q. And you didn't even talk to Officer
12 Guiton about this?

13 A. No, no, sir.

14 Q. You have besides the mounted unit you
15 have been over Corporal Hill before, correct?

16 A. Honestly, sir, probably. Probably when I
17 was in patrol first time Jeff probably worked
18 under my command with several layers in between
19 us.

20 Q. Do you ever recall there being any issues
21 with Corporal Hill in terms of performance or
22 behavior?

23 A. I don't recall any.

24 Q. Have you heard of any problems with



1 Corporal Hill since he has been out of the
2 mounted unit?

3 A. He has not worked for me, sir, but not to
4 my knowledge, not that I've heard.

5 Q. How long was it after the clean slate
6 meeting did Sergeant Hyden come to you with her
7 complaints?

8 A. I think it was a month, sir.

9 Q. And she said that for a period of time
10 his behavior was better, his attitude was better?

11 A. I think she indicated it was roughly a
12 week, sir.

13 MR. WILSON: Okay, Captain, that's
14 all I have. I appreciate your time.

15 (The deposition was concluded at 2:07
16 p.m.)

17 I N D E X

18 DEPONENT: Mark Hitch	PAGE
19 Examination by Mr. Wilson	2

20 E X H I B I T S

21 (No exhibits marked for identification.)

22 ERRATA SHEET/DEPONENT'S SIGNATURE PAGE 28

23 CERTIFICATE OF REPORTER PAGE 29

